

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

3 BRUCE SAFFRAN, M.D., Ph.D. * Civil Docket No.
4 VS. * 2:07-CV-451
5 * Marshall, Texas
6 * January 21, 2011
7 * 9:30 A.M.
8 JOHNSON & JOHNSON, ET A

7 TRANSCRIPT OF VOIR DIRE PROCEEDINGS
8 BEFORE THE HONORABLE T. JOHN WARD
9 UNITED STATES DISTRICT JUDGE

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11 * * * * *

12 P R O C E E D I N G S

13
14 LAW CLERK: All rise.

15 (Jury panel in.)

16 THE COURT: You can be seated.

17 I want to say good morning to you again,
18 Ladies and Gentlemen. I have, I guess, introduced
19 myself earlier. I don't know if my ears were still red
20 when I came in or not.

21 I know y'all were impaneled. I apologize
22 to you again, but I live over in Longview. I'm going to
23 give you the same information you're going to give to
24 everybody. I live in Longview. Cissy and I have been
25 married for 46 and had three children. Fortunately, all

1 of our children retired to the area, and we have five
2 grandchildren.

3 I've been on the bench for 12 years.
4 I'll be retiring in October to return to the practice of
5 law with my son. For 31 years, I did what these lawyers
6 did. I tried lawsuits many of them in this Court. I
7 went to Texas Tech and then graduated from Baylor Law
8 School.

9 And Cissy has not worked outside the home
10 since I was in law school, and she was taking care of
11 the house while I've practiced law and then done this
12 job. I actually served on a jury one time, and I don't
13 -- I think the lawyers went to sleep, but I did serve on
14 a case many years ago in Gregg County.

15 You've been summonsed here for jury
16 service. I want to talk to you -- first of all, the
17 cases we're going to be picking juries in all day today
18 are civil cases. And the United States is the only
19 country in the world that assures to their citizens and
20 participants in court a jury trial in a civil case.
21 That's by virtue of the Seventh Amendment to the
22 Constitution.

23 And by you being here today and
24 participating, you are doing nothing less than your part
25 as ordinary citizens to preserve, protect, and defend

1 the Constitution of the United States, and in particular
2 the Seventh Amendment; that is, the right to trial by
3 jury in civil cases.

4 So what we're about is a very important
5 duty, and in this Court's view, as I've said many times,
6 it's the highest form of civil service that ordinary
7 citizens can perform for their country, save and except,
8 of course, all of those people, men and women, who serve
9 in the Armed Services. And obviously, they are the very
10 highest form.

11 But other than -- jurors and the duties
12 that you perform are a very high form of public service
13 for your country, so I thank you for being here.

14 Now, I'm going to ask the parties here in
15 just a minute to announce in this case, but before I do,
16 I want y'all to know about the schedule, because I need
17 some information that I may need to talk about.

18 This case will actually start to trial
19 later in the afternoon. So after we pick you, you will
20 be released to come back about -- around 3:30, those of
21 you who are selected. And we will hear at least the
22 opening statements here this afternoon. So we'll know
23 what the case is about. And then we will return on
24 Monday morning next week.

25 And we work from 8:30 to 5:30 each day.

1 Now, we'll break in the morning, a lunch break, and
2 then, of course, an afternoon break, but we always try
3 to recess not later than 5:30. And the case will take
4 the entire week, I think, to complete the evidence and
5 get a jury verdict.

6 So knowing that that is the schedule that
7 you will be required to be here all next week for the
8 trial of this case, is there anyone on the jury that has
9 a schedule problem, and that is that you've got
10 something like a medical procedure scheduled, you or an
11 immediate member of your family, or you are going to
12 be -- you have tickets that you want to fly off
13 someplace not so cold or anything -- something like
14 that?

15 If anybody's got a problem you would like
16 to talk to me -- not right now, but as soon as I get
17 your numbers, if you have a scheduling problem, raise
18 your number.

19 No. 5, 12 and 13, 18, 22 -- if you will
20 drop your numbers -- 22, 25, and 26.

21 Okay. We will talk about that before we
22 get out of here today.

23 Now, at this time, I will ask for
24 announcements in the case of Bruce Saffran, M.D. versus
25 Johnson & Johnson and Cordis Corporation. That's Cause

1 No. 2:07-451.

2 What says the Plaintiff?

3 MR. ALBRITTON: Good morning, Your Honor.
4 Eric Albritton on behalf of Dr. Saffran, and we're
5 ready.

6 THE COURT: Would you please introduce
7 those people at your counsel table, Mr. Albritton, that
8 are going to be participating in this case.

9 MR. ALBRITTON: Yes, sir.

10 Danny Williams from Houston, Texas, is
11 seated to my right. Matt Rodgers also from Houston.
12 This is Mr. Curt Evans he is going to run the graphics.
13 This is Dr. Saffran, Dr. Bruce Saffran. And this is
14 Mr. Paul Taskier.

15 THE COURT: Thank you, Mr. Albritton.

16 MR. ALBRITTON: Thank you very much, Your
17 Honor.

18 THE COURT: And for the Defendant?

19 MR. SAYLES: May it please the Court.
20 I'm Dick Sayles. I'm counsel for Cordis Corporation and
21 Johnson & Johnson, and we are ready.

22 Seated at the counsel table with me is
23 Mr. Greg Diskant, who will be participating in the
24 trial, and Kathleen Crotty, who will be participating in
25 the trial. Mr. Scott Howard will be but is not in the

1 courtroom, and we will introduce him at the appropriate
2 time.

3 THE COURT: Is that your corporate
4 representative?

5 MR. SAYLES: No, it isn't, Your Honor.
6 The corporate rep is not here yet.

7 THE COURT: Okay. Thank you, Mr. Sayles.

8 Ladies and Gentlemen, this is a patent
9 infringement case, and it arises under the patent laws
10 of the United States. Just to give you a little
11 background, the patent -- the Plaintiff in this case,
12 Dr. Saffran, was issued a patent, and he's alleging that
13 the Defendants are practicing or selling products that
14 infringe upon the patented claims. And the Plaintiff is
15 seeking money damages against the Defendants.

16 The Defendants' position is that they do
17 not infringe the patent, and, additionally, they contend
18 that the particular claims of the patent that are
19 asserted against them in this case are invalid under the
20 patent law.

21 There's some unusual things about patent
22 cases, but one of the most unusual things, I guess at
23 least different from many other cases you might have sat
24 in, is that the jury is often called upon to apply two
25 different burdens of proof answering certain questions

1 that the Court will submit to you at the end of the
2 case.

3 One of the burdens of proof that you will
4 be asked to apply to the evidence that you hear is the
5 burden of proof by a preponderance of the evidence.

6 Now, when we speak here in Court about
7 someone having the burden of proof by a preponderance of
8 the evidence, it means that in order to meet that burden
9 of proof, you must believe that it is more likely true
10 than not true. And in order to find that something is
11 more likely true than not true, I think it's best -- I
12 think one of the ways to explain it best is you see here
13 the statue and we've got the scales of justice.

14 The parties at this point in the case and
15 up until we start hearing evidence, they start off even.
16 But at the end of the case, after you've heard all of
17 the evidence from both sides of the case and the final
18 arguments -- final arguments from the lawyers and then
19 the final instructions, you must decide at that point in
20 the case whether the party with the burden of proof has
21 met it.

22 In order to meet that, you must start off
23 even, but at the end of it, after all the evidence, if
24 the scales tip ever so slightly in favor of the party
25 that has the burden of proof, then they have met that

1 preponderance of the evidence standard.

2 Now, additionally, I will be submitting
3 some questions to you at the close of the case, and I
4 will ask you to apply a burden of proof to certain
5 questions by a clear and convincing standard. Now,
6 that's a more exacting burden of proof, and to be -- to
7 meet that burden of proof of clear and convincing, it
8 means that you have an abiding conviction that the truth
9 of the party's factual contentions are highly probable.

10 And if, again, we think in the terms of
11 these scales of justice, after you've heard all the
12 evidence and the arguments and the instructions of the
13 Court, in order to meet that burden of proof, the scales
14 have to tip heavier in favor of the party with the
15 burden.

16 Now, I don't want you to confuse that
17 with the burden of proof that -- undoubtedly, some of
18 you have served on juries before, perhaps in criminal
19 cases, and we all see a lot of TV, and we talk about the
20 burden of proof beyond a reasonable doubt.

21 The clear and convincing evidence
22 standard is not that high, because in the burden of
23 proof, beyond a reasonable doubt, the scales have to be
24 totally tipped in favor of the State or the Federal
25 Government in a criminal case, because someone's liberty

1 is at stake.

2 So I wanted to give you those different
3 definitions at this point in the case, because sometimes
4 the lawyers like to ask questions about applying those
5 different burdens of proof. But those are the things
6 that you need to know now.

7 The lawyers are going to be talking to
8 you about -- in a few moments, they're going -- after
9 each one of you stood and give them this information,
10 they're going to have up to 30 minutes a side to visit
11 with you and ask you some additional questions. Because
12 it's so important what we are about, it's very important
13 that you listen to the questions and give them complete
14 answers to the questions that they ask you.

15 I can assure you that they are not trying
16 to pry unreasonably into your private affairs or
17 anything private, but they're going to be asking you
18 questions that they need the answer to to make their
19 choices in jury selection, but it's important.

20 And it's important, as I've said, to give
21 complete answers. But at the same time, if any of you
22 have any reason to have -- say, well, they asked for
23 something that I don't want to really share, Judge, and
24 if you've got any hesitancy, you know, there's some
25 reason you don't want to talk about it in front of

1 everyone, all you have to do is say that's something I
2 would like to talk to Judge Ward about, and we'll have a
3 chance to talk about that privately up here outside the
4 hearing.

5 I don't know if that will come up in a
6 patent case, but I have had it come up in one or two.
7 It usually doesn't, but it comes up in a lot of cases.
8 But I'll give you an example of how it comes up
9 sometimes.

10 Right after I went on the bench, oh, I
11 guess it was 10 years ago here in this courtroom, we
12 were trying a case and it was a civil case. But it
13 involved a death that had occurred while someone was
14 incarcerated in a jail facility in one of our
15 surrounding counties.

16 And the lawyers on both sides of that
17 case necessarily and correctly were quite interested in
18 all of the potential jurors' experiences with jail
19 facilities since they were 18 years old. We had a lot
20 of private conferences that day, because it brought up a
21 lot of memories of, you know, things that you would not
22 necessarily want to discuss in public.

23 So I don't anticipate quite that level of
24 private jury conferences today, but I just give you that
25 example. But I want to assure you that, you know, these

1 lawyers are not trying to unduly pry, but at the same
2 time, if you have any hesitancy, because it's so
3 important that you give full and complete answers, just
4 say that's something I want to talk to Judge Ward about,
5 and we will be happy to discuss it with you.

6 With that instruction, I'm going to start
7 here. Let's see, Mr. Hastings, do you have a
8 microphone?

9 You got it right there. All right. If
10 you'll stand and give this -- and after you give the
11 answers to these nine questions, just pass the
12 microphone right on down.

13 JUROR HASTINGS: I live in Gilmer. I
14 have two children. I have retired from Mobil Pipeline.
15 I worked part-time as a mechanic in a lawn mower shop in
16 Longview. I've been there about six years. Worked for
17 Mobil 30 years. I have a high school education. I'm
18 divorced, and I have never served on a jury before.

19 JUROR MURRELL: My name is Joseph
20 Murrell. I live in Big Sandy, Texas. I've got two
21 children, one grandson. I work for Exide Technologies.
22 I drive a battery truck; I deliver batteries. I've
23 worked there 20 years. I finished high school. My
24 wife's name is Brenda. She works for SFG in Big Sandy,
25 and she's worked there 25 years. And I have never been

1 picked for a jury.

2 JUROR MORTON: Mark Morton. I live in
3 Marshall. Never been married, no kids. I work in Tyler
4 at the Target Distribution Center probably about 10
5 years. High school education. Never served on a jury.

6 JUROR BLAKELEY: My name is Clarence
7 Blakeley. I live in Hallsville, Texas. I have two
8 children. I work at PPC Industries, police control
9 equipment. I'm a project manager there. I've worked
10 there for 32 years. Kilgore College is my college I
11 went to. My spouse's name is Gina Blakeley. She works
12 for Harrison County Tax Assessor/Collector in
13 Hallsville. And I have been on a civil jury.

14 JUROR LOWERY: My name is Britannie
15 Lowery. I live in Atlanta, Texas. I have one son. I
16 work at Ward Timbers, a family business. I have been
17 there for six years. We buy land and timber. And I
18 have a bachelor degree from Baylor University. My
19 spouse's name is Brett Lowery. He works at Hanson
20 Brick, and he's been there for 15 years. And I've not
21 done jury service.

22 JUROR DUNCAN: My name is Hazel Duncan.
23 I live in Marietta, Texas. I have four children and two
24 stepchildren. I am currently unemployed. My background
25 is in retail sales. I've got two years of college, and

1 my husband's name is Larry Duncan. He is disabled,
2 heavy equipment operator. And I have not served on a
3 jury in several years.

4 JUROR GENNINGS: Good morning, Your
5 Honor.

6 THE COURT: Good morning.

7 JUROR GENNINGS: My name is J.F. Gennings
8 from Atlanta, Texas. I have one son and two
9 grandchildren. I'm fully retired now from Cooper Tire &
10 Rubber Company, Texarkana, Arkansas. I worked in the
11 Technical Services Department there for most of my 37
12 years or so. Two years of college. Pretty much worked
13 my way up through the ranks there in that company.
14 My wife's name is Barbie, and she taught school at
15 Bloomberg High School for 29 years. She's now retired.
16 And as far as prior jury service, I've served only on a
17 grand jury in Cass County last spring.

18 THE COURT: Hold it. Let the clerk take
19 that microphone and go back down to the other end.

20 All right.

21 JUROR LAWRENCE: My name is Oscar
22 Lawrence. I have one daughter. Worked for General
23 Motors for 28 years as an electrician. I have four
24 years of trade school. My wife's name is Cindy. She
25 works for a company here in town, Celebrating Homes, as

1 a -- I don't know -- in the Accounting Department doing
2 something. She's been there 13 years. I have served on
3 a civil jury. Been several years, but I have served on
4 one.

5 JUROR BABIN: I'm Randall Babin. I have
6 a daughter. I am the Executive Director for Soda Lake
7 Baptist Association here in Marshall. Live in
8 Hallsville. I have served there 26 years and have a
9 master's degree. My wife's name is Marsha. She teaches
10 third grade in Hallsville Independent School District.
11 She's been there for 11 years. And I've served on a
12 grand jury.

13 JUROR MURPHY: My name is Deborah Murphy,
14 and I have two children. I'm employed at St. Michael's
15 Hospital, Texarkana, Texas. I've been there for 26
16 years. I have about a year and a half of college. My
17 husband's name is Warren. He's retired from Cooper
18 Tire. He works at Wal-Mart now. And I've never served
19 on a jury before.

20 JUROR RAWLINGS: My name is Ronald
21 Rawlings. I have two children, and I'm retired. I
22 worked as an electrician for 15, 20 years, and I worked
23 before that and I was a lineman for the L.E. Myers
24 Company for several years in Longview and all over the
25 United States. And I have a GED. My wife's name is

1 Peggy. And I've been on a civil jury one time.

2 JUROR POPE: My name is Rhonda Pope.

3 I've never been married. I have no children. I have a
4 master's in business administration with a concentration
5 in management with an emphasis in quantitative methods
6 and statistics. I was selected for a civil jury here in
7 federal court, but it dismissed.

8 JUROR BLASINGAME: My name is Guylan

9 Blasingame. I live in Gilmer, the Yamboree Capital. I
10 have two grown children, two grandchildren. I'm retired
11 from U.S. Steel Corporation, Texas operations, where I
12 worked there 39 years. I'm a college graduate. My
13 wife's name is Alice. She was retired, but has recently
14 gone back to work. She's a legal secretary and she
15 works for the Upshur County District Clerk's Office.
16 The only jury service is grand jury.

17 JUROR BRASHER: My name is Hershhal

18 Brasher. I am from Bettie, Texas. I have two children.
19 I'm retired from Union Pacific Railroad where I have 34
20 years as a TRM mechanic. And I have a high school
21 education. My wife's name is Kay, and she retired from
22 teacher's aide at Gilmer Elementary School. And I was
23 on a criminal case a long time ago.

24 JUROR PATTERSON: My name is Susan

25 Patterson. I live in Hallsville. I am married to Ricky

1 for 17 years. We have two daughters. I work for
2 Marshall Health Services here in Marshall as a medical
3 office manager. My husband works for Capacity as a
4 machinist in Longview. I've been with my job about a
5 year, and he's been with his about 10. And I've never
6 been on a jury.

7 JUROR MCNEEL: My name is Richard McNeel.
8 I have two children. I'm self-employed, contract
9 welding, and have been for the last 20 years. High
10 school education. Wife's name is Lisa. She's also
11 self-employed. She's a decorative painter. I guess
12 she's done that for the last 20 years. And I have not
13 served on a jury.

14 JUROR JONES: My name is Blanchie Jones.
15 I have three children and one stepchild. I have 11
16 grandchildren and one on the way. I work for Blue
17 Cross/Blue Shield. I've been there 11 years. And let's
18 see, my educational background is I have about three
19 years of college. My husband's name is George Jones.
20 No, he's not the singer. He is retired. He used to
21 work at Gympac (phonetic spelling). He was there for 13
22 years before he retired. And, yeah, I've worked on
23 both -- both a criminal and civil case.

24 JUROR ABRAHAM: My name is Brenda
25 Abraham. I am not married. I work for BancorpSouth as

1 a customer service rep. I have two years of college.

2 I've never served on a jury.

3 JUROR JORDAN: My name is Billy Jordan,
4 and I'm from Waskom, Texas. I have five children. I'm
5 retired from General Motors Assembly Plant, Shreveport,
6 Louisiana. I was there 26 years. I graduated from high
7 school and have four years of college. My spouse's name
8 is Tommie. She also worked at General Motors, and she
9 is also retired with 23 years of service.

10 And let's see, I have served on a jury
11 and it was about a year ago. It was criminal.

12 JUROR WEBER: My name is Jackie Weber. I
13 live in Jenkins, Texas. I have two sons. I was a
14 retired office manager for an insurance company. I have
15 three years of college. My husband's name is Gary, and
16 he is a retired mine manager from up in New Guinea. And
17 I've never served on a jury.

18 JUROR REYES: My name is Shirley Reyes.
19 I live in Waskom, Texas. I have three children. I work
20 at Wal-Mart. Been there for 10 -- 9 years. Previous
21 employment I worked for the school district for 14
22 years. I have one year of college. My husband's name
23 is Reuben. He's retired from General Motors for 34
24 years. And no prior service at all.

25 JUROR DURR: Hello. My name is Debra

1 Durr, and I live in Waskom, Texas. I have one daughter
2 and one stepdaughter. I work for Community Bank of
3 Louisiana in Bossier. I have been at that office for 10
4 years for that company. And I worked for First State
5 Bank in Waskom for over 10 years, prior to that.

6 I have two years of college. My
7 husband's name is John Durr. He works for Eagle
8 Distributing in Shreveport, Louisiana, which is a
9 Budweiser distributor. He has worked there for five
10 years. He previously worked for another distributing
11 company. I don't remember the name of it. And I have
12 never served on a jury.

13 JUROR HOLLOMAN: My name is Patricia
14 Holloman. I live in Hughes Springs. I have three
15 children, three grandchildren. I work for the Criminal
16 District Attorney's Office in Cass County. I've been
17 there for 20 years. I have an associate's degree.
18 My spouse's name is Marion. He works for Dana
19 Corporation in Longview. He's been there six years.
20 And I have never served on a jury.

21 JUROR BIARD: My name is Raymond Biard,
22 and I live here in Marshall. I have two children. I am
23 retired law enforcement, and I work for Prism Gas
24 Systems as a field tech. I went to Marshall High.

25 And my wife's name is Judy. She is an

1 office manager for a local doctor, and she's been there
2 for about a year. And I've never been picked for a
3 jury.

4 JUROR BOYCE: My name is Pam Boyce. I
5 have two children. I work for Atlanta Independent
6 School District. I live in Atlanta, Texas. I am the
7 administrative -- the principal and Director of the
8 Behavior Unit there. I have worked there -- this is my
9 first year there, but I've been in education for over 20
10 years. I have a master's degree from Texas A&M
11 University in Texarkana.

12 My spouse's name is Prince, and he's not
13 the singer either. He's worked for Cooper Tire & Rubber
14 Company for the last 16 years. Before that, he was a
15 manager at Brookshire's. And, yes, I have served on a
16 criminal case.

17 JUROR NOLAN: My name is Mary Alise
18 Nolan. I've live in Gilmer, Texas. I have three
19 daughters. I work at Gilmer ISD as a sixth-grade
20 language arts teacher. I am the lead teacher. I have
21 worked there for 20 years. I have my master's degree
22 from the SFA.

23 My spouse's name is Scott Nolan. He is
24 self-employed as a contractor and he's done that for
25 over 28 years. And I have never been on a criminal or

1 civil case.

2 JUROR THOMAS: I'm Elizabeth Thomas. I
3 work for Neiman Marcus. I've been there for 11 years.
4 I am married. I have two children. My husband and I
5 have been married 30 years, and he works at Trinity
6 Industries. And my children are grown.

7 JUROR FAILS: I'm Dale Fails, and I have
8 two children. Work for U.S. Steel. Been there for 35
9 years. Just high school and trade school and came up
10 there. Not married. I'm divorced. And, yes, I've
11 served on two criminal trials.

12 THE COURT: All right. Ladies and
13 Gentlemen, thank you very much for your -- giving us
14 that information. That will help us move along.

15 Mr. Albritton, are you going to address
16 the jury?

17 MR. ALBRITTON: Yes, sir.

18 THE COURT: I will give you a five-minute
19 warning.

20 MR. ALBRITTON: Thank you very much, Your
21 Honor.

22 Good morning.

23 JURY PANEL: Good morning.

24 MR. ALBRITTON: Just like His Honor did,
25 since he had to suffer through telling us about

1 yourself, I'll tell you about me. My name is Eric
2 Albritton. I lived in Longview. I've got two kiddos.
3 I've got a little boy that's 10 and a daughter who's 12
4 about to be 13.

5 I'm a lawyer. I have a law firm in
6 Longview. It's down on Tyler Street called the
7 Albritton Law Firm. I've been practicing law by myself
8 since about 2000, and before that, I practiced with some
9 other lawyers.

10 My educational background is I grew up in
11 Rockwall, Texas. I went to high school, Rockwall High
12 School. I went to college at Baylor, and then I went to
13 law school out in California.

14 My wife's name is Michelle. She's
15 actually my high school sweetheart. She -- she's a
16 therapist; she's a play therapist, got a master's
17 degree, although she doesn't work outside the home right
18 now. She's raising babies and analyzing me a lot.

19 I keep trying to remind her that she's
20 supposed to be a therapist for children and not adults,
21 but she doesn't listen to me much about that. She
22 hasn't worked since Grace, our daughter, was born, and I
23 have never served on a jury before.

24 I introduced these folks with you -- with
25 me. Bruce Saffran is the Plaintiff in this case. Dr.

1 Saffran is a doctor. He lives in Philadelphia,
2 Pennsylvania, and he's got a couple of boys.

3 This is the most unusual part of the
4 case, and some of you have been on juries before. This
5 is the only time you guys get to talk to us. During the
6 course of the trial for whomever is seated as the jury,
7 lawyers will talk to you; witnesses will talk to you;
8 His Honor will talk to you. You don't get to talk back.
9 This is your chance to talk back, and I encourage you to
10 do this, because it's a real important process.

11 We're not trying to figure out if you're
12 fair people, okay? I figure you're all fair people. We
13 are trying to figure out if you're the right kind of
14 person to serve on this type of case, because we all
15 have our own life experiences. Like I told you, I've
16 got these two little kids, okay, and if I was called to
17 jury duty and somebody wanted -- and the case had to do
18 with -- it was a criminal case and it had it to do with
19 somebody that intentionally harmed a child, well, I
20 would definitely not be the right kind of person for
21 that case based on my circumstances.

22 Now, that doesn't mean I'm not a fair
23 person, because I think I'm a fair person. So that's
24 what we're doing. We're trying to figure out if, based
25 on your background and your circumstances, you're the

1 right kind of person to serve on this case.

2 So that's what we're doing. And, you
3 know, all we really ask for is for you to tell us really
4 how you feel. That's all we're asking for. I mean,
5 everybody's got an opinion about something. That's one
6 of the great things about America, right? And we've got
7 lots of folks who worked at Cooper Tire. So let me give
8 you an example about differing opinions.

9 Some folks think that collective
10 bargaining units, unions, are great things, okay? Other
11 people, though, think, you know, I just don't think it's
12 really a good thing. So let me ask you this: Who's
13 ever been offered the opportunity to be in a union but
14 declined?

15 Yes, ma'am, what was -- yes, ma'am?

16 JUROR NOLAN: Teachers union.

17 MR. ALBRITTON: And is that Ms. Reyes?

18 JUROR NOLAN: Ms. Nolan.

19 MR. ALBRITTON: I'm sorry. Ms. Nolan.

20 Okay. Thank you very much, Ms. Nolan.

21 Now, are you Brent Goudarzi's sister?

22 JUROR NOLAN: I am.

23 MR. ALBRITTON: Well, I'm sorry to tell
24 that to everybody here, but thank you very much,
25 Ms. Nolan.

1 THE COURT: In defense of Mr. Goudarzi,
2 he's a well-known lawyer.

3 MR. ALBRITTON: And a friend of mine.

4 JUROR NOLAN: Good.

5 MR. ALBRITTON: And you know, some people
6 have got more opinions than other people. You know,
7 like for instance, sometimes you drive down the road and
8 you see people that have got bumper stickers, and I'm
9 not talking about a parking sticker or something like
10 that, but a sticker that says -- in fact, His Honor, we
11 were in this courtroom one time and somebody told us
12 about a bumper sticker they had that said shut up and
13 drive. We've all seen these people talking on their
14 cell phones.

15 Who's got a bumper sticker on their car
16 that makes some sort of a statement about how you feel?
17 You know, that you're outspoken. Anybody got a bumper
18 sticker on their car?

19 All right. Thank you.

20 Now, in this lawsuit, there are two
21 Defendants. The first Defendant is Johnson & Johnson.
22 Mr. Evans -- all right.

23 The first Defendant is Johnson & Johnson.
24 It's a real big company, and it's got three divisions.
25 It's got a Consumer Division that's got 19 subsidiaries.

1 It's got a Pharmaceutical Division that's got 85
2 subsidiaries. Then it's got a Medical Devices and
3 Diagnostics Division with 93 subsidiaries.

4 Mr. Evans, if you could put up the next
5 slide, please.

6 Now, I don't have time to go over all of
7 the Johnson & Johnson companies with you today, okay?
8 But what we've got here on the slide is that you can all
9 look at and take your time. These are -- this is just a
10 smattering or an example of some of the companies in
11 Johnson & Johnson within their Medical Devices and
12 Diagnostics Division.

13 One of those companies you will notice
14 right here is Cordis Corporation. Cordis is the other
15 Defendant in this case. So the two Defendants are
16 Johnson & Johnson, this big conglomerate, okay, and then
17 Cordis, one of its subsidiaries.

18 Is anybody familiar with any of these
19 companies, Cordis or any of these other companies listed
20 on the screen?

21 Have you yourself or a close member, to
22 your knowledge, anybody ever worked for Johnson &
23 Johnson or one of these -- yes, sir, that's Mr. McNeel?

24 JUROR MCNEEL: Yes.

25 MR. ALBRITTON: If you would tell us

1 about that, Mr. McNeel.

2 JUROR MCNEEL: I have an uncle out of
3 Little Rock, Neil Brown, electrical engineer.

4 MR. ALBRITTON: Yes, sir.

5 JUROR MCNEEL: Went to North Carolina to
6 start a new factory that they have there. Under the
7 impression that they were going to move him up, and then
8 once he got the plant up and running, they denied. He
9 was terminated.

10 MR. ALBRITTON: Okay. All right.

11 Anybody else have any experience with
12 Johnson & Johnson or any of these subsidiaries,
13 including specifically Cordis -- Cordis Corporation?

14 Anybody own any stock, to your knowledge,
15 in Johnson & Johnson? The stock ticker is J&J.

16 Anybody, either you or your family members or close
17 friend own any stock in Johnson & Johnson?

18 All right. Thank you very much. You can
19 take that down, Mr. Evans.

20 Now, this is a lawsuit between Dr. Bruce
21 Saffran and Johnson & Johnson and Cordis Corporation.

22 I'm just going to refer -- throughout the
23 whole case, we're going to refer to them as Johnson &
24 Johnson and just keep it easier.

25 Anybody ever hear about this lawsuit

1 between Dr. Saffran and Johnson & Johnson before you got
2 here today?

3 I wouldn't expect that you would have,
4 but nobody's heard about that?

5 Now, there are a couple of lawyers here.
6 Mr. Sayles stood up and he's going to talk to you a
7 bunch in this case. Mr. Sayles is from Dallas, Texas.
8 Mr. Diskant is from a law firm in New York called
9 Paterson Belknap. It's got about a couple of hundred
10 lawyers.

11 And Mr. Sayles has got a partner who's
12 here in the courtroom -- if you could stand up -- Mark
13 Strachan. Mark used to live here. He practiced law in
14 Marshall, practiced law in Longview. His wife is a
15 Marshall gal. Lived here, you know, since high school
16 on. Carla Strachan used to be Carla Cooper.

17 Does anybody know Dick Sayles, his
18 partner, Mark Strachan or Carla Strachan or Mr. Diskant
19 or anybody associated with that law firm of Patterson
20 Belknap?

21 All right. Thank y'all very much.

22 Let me see a show of hands. Who's
23 been either -- and when I say you, I'm talking about you
24 or a close family member or a close friend. Who's ever
25 been a defendant in a lawsuit? That means you or your

1 family member or something like that got sued by
2 somebody else other than a divorce? I'm not talking
3 about divorces.

4 Anybody ever been a defendant in a
5 lawsuit?

6 Nobody's been a defendant in a lawsuit?

7 Let me back up for a second. You know,
8 sometimes you see this on TV, and lawyers do this all
9 the time. They're going to say, by your silence, I'll
10 assume you agree with me. Well, I'm not going to assume
11 because you're quiet that you agree with me.

12 I'm asking you -- because there might be
13 lots of reasons you're not talking. So talk to me about
14 what's going on and let me know if any of these
15 issues -- if any of this raises issues with you.

16 Raise your hand if you think there are
17 too many lawsuits.

18 All right. Now, let me get your number.
19 All right. Lots of folks think that there are too many
20 lawsuits. I understand that.

21 And there are organizations out there
22 that are directly organized in response to that feeling
23 that lots of people have. Like there's an organization
24 called East Texans Against Lawsuit Abuse. Anybody ever
25 heard of that?

1 Raise your hand if any of you are a
2 member of or have ever given money to East Texans
3 Against Lawsuit Abuse.

4 Nobody?

5 Now, everybody in the world, including
6 me, is against frivolous lawsuits. We agree everybody
7 against frivolous lawsuits?

8 All right. And Judge Ward and other good
9 judges like him get rid of frivolous lawsuits. And when
10 I say frivolous, what I mean is absolutely, positively
11 no merit, just should be thrown out, okay?

12 There's some other lawsuits. A
13 non-frivolous lawsuit is a lawsuit where there's a
14 legitimate dispute between people, okay? So you've got
15 frivolous, no merit whatsoever, and then non-frivolous
16 where you've got a legitimate dispute against people,
17 and they just need it resolved by us, okay?

18 Raise your hand, let me know who here
19 thinks that, you know, there are just more frivolous
20 lawsuits out there, those without any merit at all, than
21 non-frivolous lawsuits? Anybody feel that way?

22 And if you do, again, it's certainly
23 okay. We just want to know about it. Everybody wants
24 to know about that.

25 Does anybody think that there's more

1 frivolous than non-frivolous lawsuits?

2 Okay. Now, you know, we're talking about
3 lawsuits. We think that -- lots of us think there's
4 just too many of them. Some people think that, you know
5 what, if you've got a dispute with somebody, you've got
6 a dispute with a company, but, you know, you just ought
7 not to sue; it's not the right way for people to resolve
8 their problems. And that's okay. Lots of people think
9 that.

10 Now, there are folks on the other side
11 that say, you know what, in our culture and in our
12 society, there's really no other way to resolve a
13 dispute; some disputes need to be resolved through the
14 legal system.

15 What I'm wondering is, who on this panel
16 falls into that first category; you think, you know
17 what, no matter what happened, you just don't think
18 people ought to file lawsuits? Does anybody feel that
19 way?

20 Let me ask you, Mr. Gennings, do you feel
21 that way, that, you know, folks just ought not to file
22 lawsuits --

23 JUROR GENNINGS: No.

24 MR. ALBRITTON: -- to address their
25 grievances.

1 JUROR GENNINGS: I do not.

2 MR. ALBRITTON: You do not feel that way.

3 What about you, Ms. Pope; how do you feel
4 about that? Do you think that people, if they've got
5 disputes, that they ought to work them out in some way,
6 other than through the filing of a lawsuit?

7 JUROR POPE: I think that -- I believe
8 that the proper way is to first address someone. If
9 that isn't -- with the issue. If that doesn't resolve
10 it, then you take another one. And in our country, you
11 go through the process; you bring it before the body.
12 If that doesn't work, then at that point, we have the
13 legal system to address our issues and concerns.

14 MR. ALBRITTON: Thank you very much,
15 Ms. Pope.

16 Mr. Babin, let me ask you. How do you
17 feel? Do you think that if folks have got a dispute
18 that, you know, it's a legitimate thing to file a
19 lawsuit, or do you think folks just ought not file
20 lawsuits?

21 JUROR BABIN: If it's a legitimate cause,
22 then, yes, I think they have the right in America to use
23 the legal system to get justice.

24 MR. ALBRITTON: Thank you very much,
25 Mr. Babin.

1 Now, let me ask you a related question,
2 and this might, you know -- I've actually heard this
3 from folks before, and it's good. I mean, people can
4 certainly feel this way.

5 Some folks just kind of have a moral
6 opposition to somebody filing a lawsuit to ask for
7 money. They just think, you know what, I would be good
8 on some things. You know, there are some kinds of cases
9 I would be happy to deal with, but I just don't really
10 feel comfortable being called upon to award money
11 damages. And this is a lawsuit that's going to involve
12 money damages.

13 Does anybody feel like, you know, you're
14 just probably not the right kind of person for this
15 particular case, because you'd be uncomfortable with
16 having to award money damages? Anybody feel that way?

17 Now, Mr. Evans, if you would, put up this
18 next slide.

19 Now, Ladies and Gentlemen, I alluded to
20 this. In this case, Dr. Saffran is going to be asking
21 for money damages. He's going to say that Johnson &
22 Johnson used his property, his patented invention,
23 without permission, and they've made lots and lots of
24 money, okay, over it.

25 And so one of the issues in this lawsuit

1 and in all lawsuits is you have to figure out the right
2 damages. And I'm showing you a formula here that
3 everybody agrees is the formula you use. And at the
4 top, you've got a royalty base. That's a -- that's a
5 phrase you're going to hear in this case. And that's
6 the revenue, the amount of money a company has made
7 using somebody's invention.

8 The next word you see there or the next
9 phrase is royalty rate. That's a percentage. So you're
10 talking about a percentage of revenue equals a
11 reasonable royalty.

12 Now, Ladies and Gentlemen, in cases -- in
13 many patent cases, that top number, the revenue, is a
14 very big number, literally billions and billions of
15 dollars, like more than \$5 billion. I mean, that's hard
16 to -- at least for me, to sort of conceive of, but it's
17 a ton of money.

18 And so no matter whatever rate you apply
19 by 5 or \$8 billion, that's going to come up with a
20 really big number here on the bottom.

21 And so in patent cases and lots of times,
22 you're talking about a situation where there are
23 literally hundreds of millions of dollars at issue.

24 You know, most of us aren't, you know,
25 used to dealing with that kind of money, to say the

1 least. I mean, talk about my kids call me Captain
2 Obvious. Well, how about that for a Captain Obvious
3 statement?

4 I mean, we just -- it's beyond our
5 understanding, that kind of money. And so some folks
6 think that, you know, it would just be really hard for
7 me or difficult to sit in a case, and then at the end of
8 the day, if the facts and circumstances warranted it, to
9 write in a number in the hundreds of millions of
10 dollars.

11 And that's okay, okay? You know, some
12 folks feel that way.

13 Does anybody feel like, you know what, no
14 matter what the facts and circumstances are, I just
15 don't think I could ever award somebody a hundred, 200,
16 \$500 million. Does anybody -- yes, ma'am. Ms. Lowery,
17 you feel that way?

18 JUROR LOWERY: Uh-huh.

19 MR. ALBRITTON: Okay. And I'm not
20 surprised. I'm not surprised. That's not uncommon.

21 To other folks, you know, like
22 Ms. Lowery, you know what, no matter what the facts and
23 the circumstances in a case, I just don't think I can
24 write a number in a verdict form with that many zeros,
25 in the hundreds-of-million-dollar range. Anybody else

1 feel like Ms. Lowery?

2 Mr. Lawrence, how about you; do you feel
3 like that in the right case under the right
4 circumstances you'd be able to write a number in a
5 verdict form that's got lots and lots of zeros, hundreds
6 of millions of dollars? Is that something --

7 JUROR LAWRENCE: Yeah, I believe I could.

8 MR. ALBRITTON: You could?

9 JUROR LAWRENCE: In the right case.

10 MR. ALBRITTON: Yes, sir, in the right
11 case; that's right.

12 What about Mr. -- Mr. Blakeley, how do
13 you feel about that? Are you sort of like Ms. Lowery
14 and that is, you'd just be under any circumstances --

15 Mr. Blakeley is No. 4. Thank you.

16 JUROR BLAKELEY: I never have thought
17 about it.

18 MR. ALBRITTON: Well, as we're talking
19 about it, what do you think? How does that strike you?

20 JUROR BLAKELEY: I guess it would depend
21 on the merits of the case.

22 MR. ALBRITTON: Yes, sir.

23 What about you, Mr. Gennings; how do you
24 feel about that? Are you sort of in the same camp as
25 Ms. Lowery that --

1 JUROR GENNINGS: No, I'm not.

2 MR. ALBRITTON: You're not. Thank you
3 very much, Mr. Gennings.

4 Now, you know, in this case, you see that
5 Dr. Saffran is the Plaintiff. He's the person who owns
6 this patent. And does it change anything, that if it's
7 a private person that's asking or that would be -- could
8 you award hundreds of millions of dollars to a private
9 person in the right kind of case?

10 Now, we're all -- you know, we live out
11 here and know lots of people who work -- I know lots of
12 people who work in the oilfield, okay? I mean, pretty
13 common stuff. I mean, this shale has been quite the
14 boom to people. In fact, my office manager, her
15 husband, works in the oilfield.

16 And in oil and gas cases, if you're a
17 landowner and somebody takes -- comes in and drills a
18 well on your place or comes in and cuts your timber,
19 okay, you know, people pay for that. It's like this --
20 it's a royalty. So that's what we're talking about when
21 we're talking about damages in a case like this. Paying
22 somebody for using their property.

23 Anybody on this panel, you, your family
24 member, or close friend, ever had a heart attack?

25 Let me get your numbers there. That's

1 Mr. Bailey (sic), No. 4; Mr. Morton, No. 3; Mr. Murrell,
2 No. 2; Mr. Gennings, No. 7; Mr. Brasher, No. 14;
3 Mr. Blasingame, No. 13; and Ms. Pope, No. 12;
4 Mr. Rawlings, No. 11; Ms. Murphy, No. 10, Mr. Babin,
5 No. 9, 15, 17, 18. Most of you, so I'm just going to
6 get your number. I mean no disrespect. 20, 22, 25, 26,
7 27, and 28.

8 Let me ask you a little more focused
9 question. Have you or your family member or your close
10 friend ever, as a result of having heart problems, had a
11 cardiac stent in implaced -- implanted?

12 All right. Now, let me get that.

13 Mr. Murrell, Mr. Blakeley, Ms. Duncan,
14 Mr. Blasingame, Ms. Pope, Mr. Rawlings, Ms. Murphy,
15 Mr. Babin.

16 Then we've got Ms. Patterson, Ms. Jones,
17 Ms. Abraham, Ms. Durr, Ms. Weber, Mr. Jordan,
18 Ms. Thomas, Ms. Boyce, and Mr. Fails.

19 Anybody, to your knowledge, have a
20 cardiac stent that's made by or sold by Johnson &
21 Johnson? The device at issue in this case is called
22 CYPHER. It's Johnson & Johnson's cardiac stent.

23 Anybody -- anybody know if you or your
24 family member or your close friend ever had a Johnson &
25 Johnson stent?

1 Anybody know whether it was a
2 drug-eluting stent, which is what CYPHER is, or a bare
3 metal stent? Is that the level of detail that you know?

4 Yes, ma'am, Ms. Jones?

5 JUROR JONES: Uh-huh.

6 MR. ALBRITTON: Is it drug-eluting or --
7 yes, ma'am?

8 JUROR JONES: Yes.

9 MR. ALBRITTON: Who is it that had that?

10 JUROR JONES: My husband.

11 MR. ALBRITTON: Yes, ma'am, was that
12 recently?

13 JUROR JONES: A year ago January.

14 MR. ALBRITTON: Is he doing okay?

15 JUROR JONES: Yes, he is.

16 MR. ALBRITTON: My mom had one within the
17 last 12 months, too, so -- all right. Thank you for
18 sharing that with us.

19 Mr. Rawlings?

20 JUROR RAWLINGS: Yes.

21 MR. ALBRITTON: Was it a drug-eluting
22 stent or bare metal stent?

23 JUROR RAWLINGS: Three of them were. One
24 of them was a metal. The first one was a metal; the
25 other three was drug-eluting.

1 MR. ALBRITTON: Drug-eluting. And was
2 this you yourself or --

3 JUROR RAWLINGS: Yes.

4 MR. ALBRITTON: Yes, sir. And about how
5 long ago did that happen?

6 JUROR RAWLINGS: I think the last one was
7 '04.

8 MR. ALBRITTON: Well, you certainly seem
9 to be doing well. Thank goodness.

10 Do you know what kind -- do you know who
11 manufactured that stent?

12 JUROR RAWLINGS: No, I don't have that on
13 me. My wife keeps all that information in her purse.

14 MR. ALBRITTON: Okay. Thank you very
15 much, Mr. Rawlings.

16 Anybody else?

17 Let me see the hands of anybody that
18 directly or a family member or a close friend works in
19 the medical industry in any way.

20 Let me see your -- yes, sir,
21 Mr. Gennings, Mr. Rawlings, Ms. Murphy, Ms. Patterson,
22 Ms. Durr, Mr. Biard, and Ms. Holloman. If -- well,
23 let's just go through one by one real quick and tell me
24 in what capacity you or your family members or friend
25 works in the medical field.

1 JUROR MURPHY: My name is Deborah Murphy.
2 My sister is an RN, and I've been in St. Michael
3 Hospital for 26 years in different areas.

4 MR. ALBRITTON: What do you do right now
5 at St. Michael's?

6 JUROR MURPHY: Dispatcher/operator.

7 MR. ALBRITTON: Okay. Great. And does
8 your sister work in cardiac medicine?

9 JUROR MURPHY: She's been pretty much all
10 over. She does dialysis now, but she have -- yes, she
11 has done that, too.

12 MR. ALBRITTON: Okay. Great. Thank you
13 very much, Ms. Murphy.

14 Other folks in that, Mr. Rawlings?

15 JUROR RAWLINGS: Yes, my sister-in-law,
16 she's an RN. She works for Home Healthcare.

17 MR. ALBRITTON: She does that here in
18 East Texas?

19 JUROR RAWLINGS: Yes, the Longview area.

20 MR. ALBRITTON: All right. Has she ever
21 done any work with cardiac patients, to your knowledge?

22 JUROR RAWLINGS: Not that I know of.

23 MR. ALBRITTON: Okay. Other folks over
24 here in the jury box?

25 Mr. Gennings?

1 JUROR GENNINGS: Yes, sir. I have a
2 brother-in-law who's a physician in Atlanta, Atlanta,
3 Texas.

4 MR. ALBRITTON: Okay. There in Cass
5 County?

6 JUROR GENNINGS: Cass County, yes.

7 MR. ALBRITTON: What kind of doctor is
8 he?

9 JUROR GENNINGS: He's a general
10 practitioner.

11 MR. ALBRITTON: An internal medicine
12 doctor?

13 JUROR GENNINGS: Atlanta Memorial in
14 Atlanta, just a general practitioner.

15 MR. ALBRITTON: Great. Thank you very
16 much, Mr. Gennings.

17 THE COURT: Five minutes.

18 MR. ALBRITTON: Thank you, Your Honor.

19 Some people love to talk about science
20 and chemistry and technical things, and, Mr. Gennings, I
21 know you were an engineer, so talking about technical
22 things might be easy for you.

23 Raise your hand, if you're like I assume
24 Mr. Gennings is, and that is, talking about science and
25 engineering, those things are easy; they come, you know,

1 natural to you; you like that. Raise your hand if
2 that's right.

3 Ms. Pope, No. 12.

4 Anybody else?

5 Science -- yes, sir, that's Mr. --

6 JUROR JORDAN: Jordan.

7 MR. ALBRITTON: I'm sorry. Thank you,
8 Mr. Jordan.

9 Anybody else, science, engineering?

10 Yes, sir, Mr. Blakeley.

11 Anybody else like Mr. Blakeley, that's
12 science, engineering, those things are -- you know, come
13 easy to you and you like it and you enjoy it? Anybody
14 else?

15 Thank you very much.

16 Now, some people, as you know,
17 Dr. Saffran has a patent. And some folks think, you
18 know, inventions are just more likely to be -- come up
19 with by people that work for big companies. Like
20 Johnson & Johnson, they've got research scientists and
21 all that. Dr. Saffran is a private person.

22 Who thinks that -- raise your hands if
23 you believe that inventions are just more likely --
24 important inventions are more likely to be -- come up
25 with by folks that work for big companies as opposed to

1 folks who work on their own? Anybody feel that way?

2 All right. Final question: Any of you
3 ever -- or two more -- anybody ever been a foreman of a
4 jury?

5 Yes, ma'am. That's Ms. -- Ms. Jones.

6 Nobody else been a foreman of a jury?

7 Now, you know yourself better than any of
8 us, of course. Anybody sitting there thinking: You
9 know what, if Mr. Albritton had just asked me the
10 following question, I would have told him something that
11 he would have thought was important?

12 So cut me some slack. If I've missed a
13 question that you think's important or that you think
14 Dr. Saffran would like to know about or that you think
15 Johnson & Johnson would like to know about, would you
16 tell us about that?

17 Is there anybody out there thinking
18 there's some question that lawyer should have asked me
19 but didn't?

20 Okay. Great. Thank y'all very much. We
21 appreciate it.

22 THE COURT: Thank you, Mr. Albritton.

23 MR. ALBRITTON: Thank you, Your Honor.

24 THE COURT: All right. Mr. Sayles.

25 MR. SAYLES: May it please the Court.

1 Ladies and Gentlemen of the Jury Panel,
2 at least if you look down the tracks, you can see the
3 caboose coming.

4 I want to do as Mr. Albritton did and
5 tell you a little bit about myself, and then I'm going
6 to ask you some questions from the other side.

7 You know, whether we're Dr. Phil fans or
8 not, as Dr. Phil says, no matter how flat you make the
9 pancake, there are two sides to it. And we're going to
10 talk about it from a different perspective here in just
11 a moment.

12 I live in Dallas now. I used to live in
13 McKinney where I practiced law for 20 years. I have
14 three grown sons. I have a law firm in Dallas, and I've
15 been a trial lawyer for 36 years. I have to wear these
16 glasses on account of being around that long, and I've
17 had the honor and the privilege of trying cases
18 throughout East Texas, and including in this very
19 courtroom on a number of occasions.

20 I have a degree from Vanderbilt
21 University, undergraduate degree. I played football
22 there. I was the slowest lineman to ever play football
23 in the Southeastern Conference, a record I still hold.
24 And then I went to the University of Houston Law School.
25 My wife's name is Veronica. She is retired after 21

1 years in marketing. She is now staying at home and
2 working out and making plans.

3 Prior jury service, I've been on a couple
4 of panels, but they've never taken me.

5 So now let me start in with some
6 questions. One thing that you have already observed is
7 the order in which a case like this will take place.
8 And Mr. Albritton, as you saw, went first. He stood up
9 and announced first. He got to make his voir dire
10 first, and that's decided by the rules of civil
11 procedure. That's the way it is in every case.

12 Some psychologists write things that say
13 jurors who walk into a courtroom make up their minds in
14 the first 10 minutes. Well, if you don't get to speak
15 for 30, you can see how that could be pretty concerning.
16 And everybody will say they will do it, but it's easier
17 said than done. Will you keep an open mind until you
18 have heard both sides, the examination of the witnesses,
19 the cross-examination, the Plaintiff's witnesses, and
20 later the Defense witnesses?

21 It's a human instinct to make up your
22 mind pretty quickly when you size something up. But in
23 a courtroom, it's really important to keep an open mind.

24 And I'm going to go way to the back of
25 the room back there, because I don't want to forget the

1 fifth row.

2 Mr. Fails?

3 JUROR FAILS: Yes, sir.

4 MR. SAYLES: Can you see why I would be
5 concerned about the order that things go down in a
6 courtroom, since we go second, and would be wanting the
7 jurors to commit to keep an open mind?

8 JUROR FAILS: Yes, sir, I do.

9 MR. SAYLES: And if you were selected to
10 sit on this jury, will you do that?

11 JUROR FAILS: Yes, sir.

12 MR. SAYLES: All right. Let me ask
13 somebody else.

14 Mr. Biard, did I say that right?

15 JUROR BIARD: Biard (pronouncing).

16 MR. SAYLES: Biard (pronouncing)?

17 JUROR BIARD: Yes, sir.

18 MR. SAYLES: I didn't have any glasses
19 on.

20 Mr. Biard, of course, you can see why I
21 would bring that up, right?

22 JUROR BIARD: Yes, sir.

23 MR. SAYLES: And am I right, that
24 oftentimes we, as human beings, kind of judge things
25 when we first see it? That's a natural instinct?

1 JUROR BIARD: Yes.

2 MR. SAYLES: Now, in an important
3 proceeding like this, would you be able to take the oath
4 as a juror, which is an oath that you will keep an open
5 mind until you've heard it all?

6 JUROR BIARD: Yes, sir.

7 MR. SAYLES: Okay. And can you
8 understand why I would bring that up?

9 JUROR BIARD: Yes.

10 MR. SAYLES: Okay. Thank you very much.

11 Now, I'm going to ask the question this
12 way. I think everybody can understand that, but is
13 there anybody that is already leaning, say, in favor of
14 Dr. Saffran just because of what you heard first?

15 Anybody?

16 Okay. All right. So when you're seated
17 in the soft seats of the jury box, we're going to rest
18 assured each day that you are waiting to hear what does
19 Mr. Sayles have to say and what does Mr. Diskant have to
20 say.

21 Now, we've talked about the technical
22 background, and my client's name is actually Cordis
23 Corporation. It is in the family of Johnson & Johnson,
24 and I am very proud of that. Johnson & Johnson has made
25 many products. I'm sure everyone has used a Johnson &

1 Johnson product.

2 But here's my question: Has anyone ever
3 used a Johnson & Johnson product and had a bad
4 experience? Anybody?

5 You know, if I was representing Chevrolet
6 and somebody said, well, I had a lemon, I would want to
7 know that. So that's why I'm asking you now. So I take
8 it that everyone that's used those products, whatever
9 they are, from band-aids to medical devices has not had
10 a bad experience.

11 Mr. Albritton asked you a question about
12 whether -- he asked whether you felt inventions were
13 usually made by big corporations. And of course,
14 they're not always made by big corporations. And he
15 pointed out that Dr. Saffran is an individual, which
16 indeed he is.

17 And my client, Cordis Corporation, and
18 Johnson & Johnson, no doubt about it, is a big
19 corporation in America. I would be foolish if I did not
20 acknowledge that to you, because you all know it.

21 The law says that everyone, including a
22 corporation, is entitled to a fair trial at your hands
23 just like an individual. So let's just look at it the
24 other way.

25 Since I represent a big corporation,

1 could you treat the big corporation as fairly as the
2 individual who brought the suit?

3 Ms. Abraham, how do you feel about that?

4 JUROR ABRAHAM: I could be fair.

5 MR. SAYLES: Okay. And do you see how it
6 kind of works both ways?

7 JUROR ABRAHAM: Yes, sir.

8 MR. SAYLES: Okay. Thank you.

9 Mr. Morton?

10 JUROR MORTON: Yes, sir.

11 MR. SAYLES: How do you feel about that?

12 You know, it's not -- when you go back to
13 the jury room, if it's that great big company against
14 that man and that's going to be influential to you,
15 now's the time I've got to hear that.

16 Do you understand?

17 JUROR MORTON: I think I could treat them
18 both fairly.

19 MR. SAYLES: Okay. That's all I can ask
20 of you.

21 Now, let me just move on here. I'm going
22 to ask you to search your heart and soul. Is there
23 anybody who feels differently, who feels like that the
24 individual against a big corporation has the edge?

25 You know, we all pull for the underdog

1 all the time. That's common. But in a hall of justice,
2 that isn't right.

3 Anybody feel that way, that they would
4 lean toward the individual?

5 All right. Thank you very much.

6 This is a patent case as you've heard,
7 and very simply stated, our defense is that this is a
8 very narrow patent. It's not infringed by the Cordis
9 product, CYPHER.

10 And a separate question, the patent is
11 invalid, because there was information the Patent &
12 Trademark Office did not have.

13 And the third thing we're going to show
14 is that the damages are greatly exaggerated.

15 Now, in a nutshell, that's our position
16 in this case and what we're going to prove.

17 The Patent & Trademark Office issued
18 Dr. Saffran's patents. He got it. It was issued in
19 1997. But the law says that the jury can look at
20 information, and they may be able to look at information
21 the Patent & Trademark Office did not have and determine
22 whether that patent should have been issued, whether it
23 was new, novel, and non-obvious. A jury can do that
24 under the Constitution and the laws of this country.

25 Some folks might say, well, if a skilled

1 Patent Examiner took a look at this, who am I to
2 second-guess that?

3 Well, in a court of law, you're called
4 upon to look at the very evidence and make that
5 determination.

6 Mr. Lawrence?

7 JUROR LAWRENCE: Sir?

8 MR. SAYLES: Could you do that, sir?

9 JUROR LAWRENCE: Yes, sir, I believe I
10 could.

11 MR. SAYLES: All right. And do you
12 understand, while I have your attention here -- and this
13 is for everybody, of course -- that sometimes the best
14 of people, under the best of intentions, mistakes are
15 made? Agreed?

16 JUROR LAWRENCE: Yes, sir. We all make
17 mistakes.

18 MR. SAYLES: Yes, sir. And the Patent &
19 Trademark Office could make a mistake, and if you're on
20 the jury, you will look to see?

21 JUROR LAWRENCE: Yes, sir.

22 MR. SAYLES: All right. Mr. Blasingame?

23 JUROR BLASINGAME: Yes, sir.

24 MR. SAYLES: You realize after a
25 week-long trial, if you were to go back in the jury

1 room, after hearing all the evidence, and decide the
2 case, because you don't want to substitute your
3 judgment, based on the evidence, for the decision of the
4 Patent & Trademark Office, that would be wrong?

5 JUROR BLASINGAME: Yeah. Absolutely.

6 MR. SAYLES: All right. And so if you're
7 on this jury, you will look at that evidence?

8 JUROR BLASINGAME: I sure will.

9 MR. SAYLES: All right. Here's the
10 question, and it's going to be asked in a general way,
11 but it is, oh, so important.

12 Is there anybody on this panel that might
13 think, well, this is science; it's a technical field;
14 who am I to substitute my judgment for the Patent &
15 Trademark Office and base a decision on that as opposed
16 to the evidence in this case, brought out in this
17 courtroom? Is there anybody that would do that?

18 Okay. The area of lawyers and law firms,
19 I am very proud to be shoulder to shoulder with Greg
20 Diskant and his team from Patterson Belknap in New York.

21 Mr. Albritton is working with a law firm
22 in Washington, D.C., called Dickstein Shapiro, that has
23 hundreds of lawyers, so we're about even on that score.

24 Anybody know of the Dickstein Shapiro law
25 firm?

1 All right. Mr. Albritton talked about
2 the issue of damages, and I want to talk to you about
3 that for just a moment.

4 We believe in this case that you're going
5 to conclude at the end that there are no damages, zero.

6 And if you determine that the patent has
7 not been infringed, and that calls for a zero award,
8 could you do that?

9 Ms. Lowery, how about that?

10 JUROR LOWERY: Yes.

11 MR. SAYLES: Could you go with zero on
12 that?

13 JUROR LOWERY: If that's what the
14 evidence says, yes, I could do it.

15 MR. SAYLES: If the patent isn't
16 infringed?

17 JUROR LOWERY: Correct.

18 MR. SAYLES: Or, on the other hand, if
19 the patent was invalid, could you do that?

20 JUROR LOWERY: Yes.

21 MR. SAYLES: You will get instructions
22 from the Judge on how you make that decision.

23 JUROR LOWERY: Okay.

24 MR. SAYLES: But if you decide on the
25 facts that it's invalid, you could come back with zero?

1 JUROR LOWERY: Yes.

2 MR. SAYLES: All right. Is there anybody
3 that couldn't do that, could not come back with zero?

4 Indeed, there are big dollars involved in
5 the gross sales of this product since 2003, but look at
6 both sides of the coin.

7 Now, here's something I want to ask you
8 about. And, Ms. Duncan, I'm going to ask you on this
9 one, too.

10 Lawyers have a duty and an obligation to
11 their client to cover all the bases. Does that make
12 sense to you?

13 JUROR DUNCAN: Sure.

14 MR. SAYLES: And as Mr. Albritton said,
15 one of the things that he is going to try to prove in
16 this case is big damages. You heard that?

17 JUROR DUNCAN: Yes, sir.

18 MR. SAYLES: All right. Now, as lawyers,
19 with an obligation to our client, we have to challenge
20 those numbers. Does that make sense to you?

21 JUROR DUNCAN: Yes, sir.

22 MR. SAYLES: Now, in this case, we are
23 going to have a damage expert who is going to challenge
24 their damage expert --

25 JUROR DUNCAN: Uh-huh.

1 MR. SAYLES: -- necessarily come up, as
2 you might guess, with a lower number.

3 JUROR DUNCAN: Uh-huh.

4 MR. SAYLES: Make sense?

5 JUROR DUNCAN: Yes.

6 MR. SAYLES: All right. Now, that number
7 itself is a big number.

8 JUROR DUNCAN: Uh-huh.

9 MR. SAYLES: It's about \$60 million
10 dollars, okay? A big number.

11 Here is my worry and my concern and my
12 question to you and everyone else: You might say, well,
13 Mr. Sayles, if your client didn't infringe this patent,
14 why would you challenge those damages?

15 If you bring out a damage expert witness,
16 aren't you saying you did something wrong?

17 Can you see why I would be concerned
18 about somebody saying that back in the jury room?

19 JUROR DUNCAN: Yeah.

20 MR. SAYLES: They wouldn't have done that
21 if they hadn't done something wrong.

22 Now, I am telling you now, as lawyers, we
23 have an obligation to touch the bases, and we will. If
24 you take the oath as a juror, can you say that you will
25 consider that, along with all of the other evidence, and

1 not decide just because we're challenging damages and
2 putting out a number, we must have done something wrong?

3 Can you do that?

4 JUROR DUNCAN: Yes, I can do that.

5 MR. SAYLES: Mr. Babin -- 6, 7, 8 -- yes.

6 I got that right?

7 JUROR BABIN: Yes, sir.

8 MR. SAYLES: All right. You understand
9 my concern?

10 JUROR BABIN: Yes, I do.

11 MR. SAYLES: Does it make sense to you?

12 JUROR BABIN: Yes, sir.

13 MR. SAYLES: If you were standing right
14 in my shoes, would you feel like you've got to cover the
15 bases?

16 JUROR BABIN: You bet.

17 MR. SAYLES: So if you're on (sic) the
18 jury room and you were to feel or someone were to say,
19 well, I'm going to decide they must be responsible,
20 because they brought damage evidence, would that be
21 right?

22 JUROR BABIN: That's not fair.

23 MR. SAYLES: Okay. While you've got the
24 microphone, are you a trained minister?

25 JUROR BABIN: Yes, I am.

1 MR. SAYLES: You have a very good voice
2 and very good command in the room, so I thought perhaps
3 so.

4 JUROR BABIN: Thank you.

5 MR. SAYLES: All right. I'm going to
6 move on. You've all got the point.

7 Is there anybody here now -- and now is
8 the time to declare yourself -- that would feel, because
9 we bring out damage evidence in response to their case,
10 we're admitting we did something wrong, that we infringe
11 the patent?

12 This is now or forever hold your peace,
13 because when you get back in the jury room, it is too
14 late. And that would not be a proper basis upon which
15 to decide the case.

16 Anybody?

17 All right. I want to talk for a minute
18 about the courthouse doors being open. I think it's a
19 wonderful thing. I agree with everything that
20 Mr. Albritton said, and I agree with all the show of
21 hands about the courthouse.

22 But I want to tell you this: The
23 courthouse doors in civil cases are open to everyone.
24 Unlike in a criminal case, where the case is screened by
25 a grand jury, anyone can bring a civil case. And if

1 Mr. Albritton implied, I will assure you he did not mean
2 to imply that Judge Ward has prejudged the facts of the
3 case. You will be the sole judges of the facts of this
4 case.

5 Is there anybody that would feel, man,
6 we're in a federal courtroom; we are before an esteemed
7 Federal Judge who's been sitting since the year 2000
8 with distinction; we have an audience here of many
9 people, man, there must be something to this? Anybody
10 feel that way?

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11 | Can you see why I would ask you that?
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12 We've got to start out even. And in a
13 civil case that's filed, you will be the judges of the
14 facts, and you will be the very first to hear some of
15 the details of these facts. So I'm going to rely on you
16 to understand that.

17 And if somebody in the jury room says,
18 boy, there must be something to this, otherwise, it
19 wouldn't be here; Judge Ward would have thrown it out,
20 he will tell you in his instructions you are the judges
21 of the facts; he is the judge of the law.

22 Is that alright with everybody on the
23 front row? Understood?

24 | How about on the second?

25 | How about over here on the first pew and

1 going back?

2 All right. I'm going to talk about one
3 thing that I often do, when I'm representing a company
4 that's been sued, and that's the subject of objections.

5 Lawyers have duties that I've already
6 talked about, about covering the bases. They also have
7 a duty to make objections during the trial, or sometimes
8 we're considered to have waived it when we didn't.

9 Objections can sure be annoying. I mean,
10 we've all been to sporting events where the referee just
11 keeps calling fouls and, you know, you just want to see
12 the game played.

13 But I will tell you that from time to
14 time, it is incumbent upon us to stand up and make
15 objections. The Judge will just call balls and strikes
16 as he sees them. Some will be sustained; some will be
17 overruled. And by his ruling, he's not suggesting
18 anything about that testimony, except whether it comes
19 in or does not come in.

20 Is there anybody that feels like it's
21 wrong or improper for a lawyer to object when he feels
22 it's his duty to do so? Anybody?

23 All right. I'll tell you, in England,
24 they have a different system. They just put the witness
25 up in a chair, and the lawyers have to sit there and be

1 quiet while a witness testifies. It's totally
2 different. But that's not the way we'll be doing it
3 here.

4 You are to decide the case based on the
5 evidence that's brought to you here in the courtroom and
6 not by an internet search or any other outside source.

7 And I want to tell you now that the law
8 has some restrictions on the witnesses that can be
9 called.

10 The Plaintiff has expert witnesses who
11 will help you. We have expert witnesses who will help
12 you understand these issues in this case, but someone
13 might say why don't we just bring that Patent Examiner
14 down here from the PTO --

15 THE COURT: Five minutes.

16 MR. SAYLES: -- and see what they have to
17 say, but the law will not permit that.

18 So what I'm asking you is, will you
19 decide this case based on the evidence that is allowed
20 in the courtroom from the witness stand and in the
21 documents that are admitted into evidence before you,
22 understanding that we can't call the Patent Examiner;
23 they can't; we can't? Is that alright to everyone, to
24 you, as you sit over here?

25 Now, I want to just see a show of hands

1 on this. It might sound like a strange question.

2 Anyone that owns an electronic reader,
3 like a Kindle or an iPad, just hold your number up.
4 You know, where you get books on your little
5 electronics.

6 No. 26.

7 Anybody else?

8 All right. Kindle and iPad is not doing
9 too well over here.

10 All right. Is there anyone here that
11 loves to read for a hobby? Hold your number up, and I'm
12 just going to call them out in the interest of time.

13 6, 7, 12, 11, 10, 9, 17, 15, 19, 24, 25, 26. Thank you.

14 Now, I have to read so much at work, I
15 don't really much like to read when I don't have to,
16 because I have to read these law books all the time and
17 things of that nature.

18 Is there anybody here who would rather
19 not read? There's nothing wrong with that. Just would
20 rather -- let me tell you why I'm asking it. I'm going
21 to rephrase it just slightly, because I think I have
22 enough time to do it.

23 Some people are visual learners; some
24 people are reading learners and read the instructions.
25 Some people hear things, and that's their best learning

1 tool. And, of course, we're all a mixture of those
2 things, but I want to ask the question this way:

3 Who feels like that their learning and
4 comprehension is based more on reading than it is on
5 hearing? More on reading than it is on hearing? I
6 realize it's a combination, but I want to know if that's
7 where you would lean.

8 No. 9, No. 17, No. 26, and No. 25.

9 Dr. Saffran is a doctor. My doctor in
10 McKinney is Billy Boring. I love him; I'd believe
11 anything he said. I really would, because I've known
12 him a long time.

13 Is there anybody that feels like because
14 Dr. Saffran is an M.D. physician, he's a radiologist,
15 that he's more believable than any other ordinary person
16 on the street? Anybody? Because some of us put such
17 trust and confidence in our doctor, we feel they're more
18 believable. Anybody feel that way?

19 Let me turn the question over. It is my
20 job in this case to challenge his credibility, just like
21 it's Mr. Albritton's job to challenge the credibility of
22 witnesses that we bring forward.

23 In doing that, will anybody give an edge
24 to Dr. Saffran, because he's an M.D.? That's all I'm
25 asking, because I have to challenge his credibility, and

1 I will in this trial. Anybody?

2 All right. My time is about out. I'm
3 going to ask the final thing.

4 Is there something I should have asked?
5 We can't ask all the right questions. I'm asking the
6 same thing Mr. Albritton did.

7 Thank you so much for your patience and
8 your attention. I look forward to investigating this
9 case right here in this very courtroom and bringing you
10 the evidence. And after we have, I feel certain that
11 you'll return a just verdict.

12 Thank you very much.

13 THE COURT: Thank you, Mr. Sayles.

14 Counsel, approach.

15 (Bench conference.)

16 THE COURT: All right. I have only one
17 possible challenge for cause, and she's got a scheduling
18 problem, so No. 5.

19 MR. ALBRITTON: Yes, sir. That's what I
20 have as well.

21 THE COURT: The ones I marked for
22 scheduling problems are 5, 12, 13, 18, 22, 25, and 26.

23 Did anybody mark any additional ones?

24 MR. ALBRITTON: That's all I had, Your
25 Honor.

1 MR. SAYLES: No, sir.

2 THE COURT: Now, y'all note Jurors No. 19
3 and 20 are reversed in their names.

4 MR. SAYLES: Yes, I saw that.

5 THE COURT: Y'all caught that?

6 MR. ALBRITTON: Yes, sir, we did.

7 THE COURT: Okay. I just wanted to make
8 sure.

9 And this case -- well, it depends on what
10 I do on these excuses. If I grant all the excuses,
11 which I don't know. We're going to be down to about 25
12 or 26. I'm just not sure.

13 Okay. Y'all step back.

14 (Bench conference concluded.)

15 THE COURT: All right. Ladies and
16 Gentlemen, I'm going to excuse you here in just a few
17 minutes, and ask you, except for those who have got a
18 scheduling problem that we've talked about, that's
19 Ms. Lowery, No. 5; Ms. Pope, No. 12; Mr. Blasingame,
20 No. 13; No. 18, Ms. Abraham; No. 22, Ms. Durr; No. 25,
21 Ms. Boyce, No. 26, Ms. Nolan. Those numbers should
22 remain, and we will take you up one at a time.

23 The rest of you are excused. Be prepared
24 to come back in the courtroom at 11:40. I will get to
25 you as soon as we can and get this jury seated. I've

1 got two more to select today, so I'm moving as fast as I
2 can.

3 At this time, I will ask you to, except
4 for the ones I just called, to leave the courtroom,
5 leave your numbers in your seats, and then be ready to
6 come back at 11:40. Hopefully, we will get right to
7 you.

8 Thank you.

9 LAW CLERK: All rise for the jury.

10 THE COURT: Just go ahead.

11 (Remaining jury panel out.)

12 THE COURT: All right. Everyone please
13 be seated.

14 Let's see. Counsel, come up.

15 And, Ms. Lowery, if you will come around.

16 (Bench conference.)

17 THE COURT: Let's get the lawyers up
18 here.

19 JUROR LOWERY: Okay.

20 THE COURT: How are you today?

21 JUROR LOWERY: Fine.

22 THE COURT: Okay. You have a scheduling
23 problem.

24 JUROR LOWERY: I have a 10-month-old in
25 daycare. It closes at 5:30 in Cass County. My husband

1 could possibly be there, if absolutely needed, but I
2 always pick him up.

3 THE COURT: All right. One thing the
4 Court wanted to ask you about was in answer to one of
5 Mr. Albritton's questions, you said you just didn't
6 think you could write \$500 million down.

7 Now, I'm going to give you a little --
8 the Court is going to instruct you as to how to arrive
9 at a reasonable royalty rate.

10 JUROR LOWERY: Okay.

11 THE COURT: And, of course, you told, I
12 believe, Mr. Sayles you could write a zero down. But if
13 following the Court's instructions I gave you about how
14 you calculate a reasonable royalty rate, okay, and
15 there's about 14 or 15 factors of things and it's based
16 upon the evidence that you hear, not just the experts
17 but a lot of different evidence, if you were to, say,
18 based on a preponderance of the evidence and listening
19 to the Court's instructions and considering only
20 evidence and the Court's instructions and you came to
21 the conclusion in that jury room, this case is worth
22 \$552 million under these instructions, could you render
23 that verdict or not?

24 JUROR: Yes, I could based on the facts.

25 THE COURT: You could based on the facts.

1 I guess did the 500 million shock you at first?

2 JUROR LOWERY: At first I thought he said
3 billions of dollars. Billions is a lot.

4 THE COURT: I will tell you that we've
5 had verdicts in this courtroom in excess of a billion,
6 but -- and I will manage to say it without stuttering.
7 That's about the best I could do.

8 Anyway, so --

9 JUROR LOWERY: If the facts go that way,
10 I guess I could.

11 THE COURT: And you would?

12 JUROR LOWERY: Yes.

13 THE COURT: And would you apply the
14 burden of proof; that is, that it's more likely true
15 than not? If the scales tipped ever so slightly in
16 favor of it, you say it's 500 million and it's tipped
17 that way, you could do it?

18 JUROR LOWERY: Yes.

19 THE COURT: Okay. Any questions from
20 Plaintiff?

21 MR. ALBRITTON: No, Your Honor.

22 THE COURT: Anything from Defendant?

23 MR. SAYLES: No questions.

24 THE COURT: Okay. Thank you. Be ready
25 to come back in at --

1 JUROR LOWERY: Okay.

2 THE COURT: -- 11:40.

3 (Bench conference concluded.)

4 THE COURT: All right. Who have we got
5 next?

6 Ms. Pope, I think. Ms. Pope was first
7 here.

8 JUROR BLASINGAME: Excuse me.

9 THE COURT: I will get to you in a
10 moment, Mr. Blasingame.

11 (Bench conference.)

12 THE COURT: Good morning, Ms. Pope. How
13 are you?

14 JUROR POPE: Good.

15 THE COURT: You indicated you had a
16 scheduling problem.

17 JUROR POPE: Yes, I do.

18 THE COURT: What's your problem?

19 JUROR POPE: We're closing on our house
20 on the 27th, but I don't know what time yet.

21 THE COURT: Where is the closing?

22 JUROR POPE: In Longview. I could
23 request an afternoon, if you could be merciful.

24 THE COURT: Well --

25 JUROR POPE: I realize you have a big

1 pool to choose from.

2 THE COURT: We have a lot of things going
3 on.

4 JUROR POPE: Okay.

5 THE COURT: Are you selling a house or
6 are you buying a house?

7 JUROR POPE: Sold it and bought one.

8 THE COURT: Sold and have bought?

9 JUROR POPE: Uh-huh.

10 THE COURT: Well, what -- is there
11 something that couldn't be postponed until the following
12 week?

13 JUROR POPE: Yes, sir. We have to be out
14 of the house that we're in. We've already been in there
15 a month, because they've had trouble with the title and
16 everything getting it. We have to be out on the 27th.

17 THE COURT: You have to be out?

18 JUROR POPE: Uh-huh.

19 THE COURT: Under the contract is what
20 you're telling me?

21 JUROR POPE: No, sir. Out of the house.

22 THE COURT: I know, but under the terms
23 of the contract?

24 JUROR POPE: Yes. Under the terms of the
25 contract, yes.

1 THE COURT: Well, I have to take this up
2 with the lawyers.

3 Any question from the Plaintiff?

4 MR. ALBRITTON: None, Your Honor.

5 MR. SAYLES: No questions.

6 THE COURT: No questions.

7 JUROR POPE: Okay.

8 THE COURT: Okay. I will take it up, but
9 please be ready to come back in the courtroom at 11:40,
10 okay?

11 JUROR POPE: Okay.

12 (Bench conference concluded.)

13 THE COURT: Mr. Blasingame, if you will
14 come around.

15 (Bench conference.)

16 JUROR: Mr. Blasingame, how are you
17 today?

18 JUROR BLASINGAME: I'm doing very well,
19 Judge.

20 THE COURT: What's our problem?

21 JUROR BLASINGAME: I have surgery
22 Thursday, which I don't know -- if the trial was going
23 to be through by then, I'd be glad to serve on a jury,
24 but I'm scheduled to be operated on at 6:45 Thursday
25 morning.

1 THE COURT: Would you like to keep that
2 appointment?

3 JUROR BLASINGAME: Yeah.

4 THE COURT: All right. This has been
5 scheduled for some time?

6 JUROR BLASINGAME: Yeah. Yeah.

7 THE COURT: Any questions from the
8 Plaintiff?

9 MR. ALBRITTON: No, Your Honor.

10 MR. SAYLES: No questions.

11 THE COURT: Be ready to come back in at
12 11:40. I'll have to talk to the lawyers before you
13 leave. Thank you, though.

14 JUROR BLASINGAME: I will, sir.

15 (Bench conference concluded.)

16 THE COURT: Y'all come around just a
17 minute.

18 Hold off on -- wait just a minute,
19 Ms. Abraham.

20 (Bench conference.)

21 THE COURT: Before I forget the facts,
22 how do y'all -- no, no, I wasn't talking to you. I was
23 talking about -- I was telling Ms. Abraham to just wait
24 a moment.

25 Wait just a moment, please.

1 Now, I usually take these up when they
2 tell me about them, but how do y'all feel about these?
3 Start back with Ms. Lowery, before we forget it. She
4 said she could have her husband --

5 MR. ALBRITTON: She said she always picks
6 him up. That's a good 30-minute drive or --

7 THE COURT: Actually, it's longer than 30
8 minutes. Atlanta is 30 minutes -- it's 40 minutes to
9 Linden, so it's another 10. It's a 50-minute drive.

10 MR. SAYLES: We can let her go.

11 MR. ALBRITTON: We will agree to that.

12 THE COURT: We've got enough jurors.

13 Without objection, I'm going to excuse her.

14 Now then, I don't know if Ms. Pope has a
15 contractual obligation.

16 UNIDENTIFIED ATTORNEY: She's married, so
17 she gives her power of attorney to her husband or
18 something.

19 THE COURT: Any objection to --

20 MR. ALBRITTON: No objection.

21 MR. SAYLES: No objection.

22 THE COURT: Mr. Blasingame has got
23 surgery scheduled.

24 MR. SAYLES: I think we've got to let him
25 go.

1 THE COURT: I do, too.

2 MR. ALBRITTON: We agree, Your Honor.

3 THE COURT: I just like to get those
4 taken care of. If I have to get more contentious as we
5 go, but I think we have enough in that regard.

6 (Bench conference concluded.)

7 THE COURT: All right. Ms. Abraham, come
8 around please, ma'am.

9 (Bench conference.)

10 THE COURT: Ms. Abraham, how are you?

11 JUROR ABRAHAM: I'm good. On Thursday, I
12 was to have some testing done on my ears. I can leave
13 here and see if I can reschedule it, but that's the only
14 thing I have on the agenda. It's at 1:00 o'clock.

15 THE COURT: Okay. It's testing; it's
16 not --

17 JUROR ABRAHAM: It's not major, just --

18 THE COURT: I know you would like to keep
19 it.

20 JUROR ABRAHAM: No, I don't mind trying
21 to get out of it.

22 THE COURT: Where is it scheduled?

23 JUROR ABRAHAM: It's here.

24 THE COURT: Here in town? Well, we won't
25 be able to recess Court, but maybe -- I think you can

1 reschedule.

2 JUROR ABRAHAM: I probably can.

3 THE COURT: Thank you. I appreciate your
4 willingness to serve.

5 (Juror Abraham out.)

6 THE COURT: I didn't even have to get
7 contentious.

8 (Bench conference concluded.)

9 THE COURT: All right. Ms. Durr.

10 (Bench conference.)

11 THE COURT: Ms. Durr, how are you?

12 JUROR DURR: I'm good.

13 THE COURT: What's the problem?

14 JUROR DURR: I have a procedure scheduled
15 for today, but I canceled it for next Friday. And I
16 have another -- I have something scheduled for Thursday
17 and Friday. I have a mammogram Thursday, then I have
18 another female procedure for Friday.

19 THE COURT: Any questions from the
20 Plaintiff?

21 MR. ALBRITTON: No, sir.

22 MR. SAYLES: No questions.

23 THE COURT: Be back in here at 11:40.
24 Let me talk to the lawyers.

25 JUROR DURR: Okay.

1 THE COURT: Thank you. Be ready to come
2 back in then.

3 (Juror Durr out.)

4 MR. SAYLES: Let her go.

5 MR. ALBRITTON: We have no objection,
6 Your Honor.

7 THE COURT: Okay. She's out.

8 (Bench conference concluded.)

9 THE COURT: Ms. Boyce.

10 (Bench conference.)

11 THE COURT: Ms. Boyce, how are you?

12 JUROR BOYCE: I'm good. How are you
13 doing?

14 THE COURT: Good.

15 JUROR BOYCE: My uncle died, my daddy's
16 brother. His funeral is Tuesday in Dallas.

17 THE COURT: Any questions from the
18 Plaintiff?

19 MR. ALBRITTON: No, sir.

20 THE COURT: Any from the Defendant?

21 MR. SAYLES: No questions.

22 THE COURT: Okay. Thank you. Be ready
23 to come back in at 11:40. I will have to talk to these
24 lawyers. You'll know about 11:00 -- around 11:40 what
25 we're going to do.

1 JUROR BOYCE: Thank you.

2 (Juror Boyce out.)

3 MR. ALBRITTON: We have no objection.

4 THE COURT: Any objection?

5 MR. SAYLES: No objection.

6 THE COURT: Okay. I'm not going to tell
7 her we weren't going to let her go to her uncle's
8 funeral.

9 (Bench conference concluded.)

10 THE COURT: All right. Ms. Nolan.

11 (Bench conference.)

12 THE COURT: This is the last one, isn't
13 it?

14 MR. SAYLES: I believe it is.

15 THE COURT: This is the last one -- wait
16 just a minute. How many have we excused?

17 MR. DISKANT: One, two, three, four, five
18 (counting). Five, yes, sir.

19 THE COURT: Ms. Nolan, what's your
20 problem?

21 JUROR NOLAN: I've got several. My
22 husband's aunt, they're taking her off of life support.
23 She's about to pass away. We're very, very close to
24 her, and her funeral will be within the next three days.
25 I'm also the lead language arts teacher for my district.

1 The other teacher is out on maternity leave, and I'm it.
2 She's not going to be back till February, and it's
3 tough.

4 Also -- this is something you've probably
5 never heard -- my daughter, Liz, National Hereford,
6 she's a senior. We have a Fort Worth Livestock Show.
7 It begins next week, and I really do not want to miss
8 her doing that.

9 THE COURT: I've heard the Fort Worth
10 Livestock Show. I've been there many times.

11 JUROR NOLAN: My husband is the president
12 of the Texas Hereford Association, so it's really a big
13 deal to our family.

14 THE COURT: Okay. Let me take that up
15 with all the lawyers.

16 JUROR NOLAN: I appreciate that.

17 THE COURT: And be back at 20 till.

18 (Juror Nolan out.)

19 MR. ALBRITTON: No objection, Your Honor.

20 THE COURT: We don't get to her. We
21 don't get to her, I just realized.

22 MR. DISKANT: Do we have enough?

23 THE COURT: Well, let me see. Okay,
24 you've got 10 jurors -- 10 jurors and 8 strikes; that's
25 18. Then you start adding. I think before we got to

1 Ms. Boyce, we did -- we could have stopped, because we
2 excused one, two, three, four (counting).

3 MR. DISKANT: Five, I think. Oh, before
4 Ms. Boyce, yes.

5 THE COURT: Okay. So you just strike
6 down through --

7 MR. ALBRITTON: Reyes, 21.

8 THE COURT: No. I struck four, right? I
9 excused four -- well, wait.

10 Let me look one more time.

11 MR. DISKANT: Take 6 out and we've got
12 22.

13 THE COURT: No. No -- okay.

14 MR. DISKANT: Oh, I'm sorry.

15 THE COURT: You just strike down through
16 No. 21. You don't get to No. 22.

17 MR. ALBRITTON: Right. Yes, sir.

18 THE COURT: Because I have excused --
19 before 21, I've excused 5, 12, 13. We did not excuse
20 No. 18.

21 MR. DISKANT: 5, 12, 13, correct.

22 THE COURT: And so -- you've got 10
23 jurors, 8 strikes, so the max is 21. So we don't even
24 have to consider 22.

25 MR. DISKANT: Good.

1 THE COURT: So if you'll take your
2 strikes between -- don't take anything below 21, four
3 each. Have your strikes back to -- y'all know where you
4 are pretty much, I think, but do you need more than 15,
5 17, 18 minutes?

6 MR. ALBRITTON: No, sir.

7 THE COURT: Y'all get your strikes back
8 to Ms. Andrews by 20 till.

9 MR. SAYLES: Yes, sir.

10 THE COURT: After you've turned them into
11 Ms. Andrews, immediately notify each other of the
12 numbers. And if you have any type of challenge, let me
13 know immediately.

14 MR. DISKANT: And we're just going to
15 consider Billy Jordan, No. 19, now and No. 20 --

16 THE COURT: Yeah. I mean, y'all strike
17 them by the way their named. But they were seated --
18 Jordan was seated as No. 19 and Weber was seated as
19 No. 20. So exercise your strikes as they are numbered
20 here, but I just want to make sure y'all were clear, in
21 other words, based on the names based on the information
22 they gave you.

23 MR. ALBRITTON: Your Honor, may we use
24 the jury room?

25 THE COURT: Well, somebody could use

1 the -- is it unlocked? And then you've got an attorney
2 conference room back here.

3 COURTROOM DEPUTY: She is letting them
4 meet in there.

5 THE COURT: She's letting them gather
6 there. Can you just use, then, just here, and we will
7 let them use the attorney conference room?

8 MR. ALBRITTON: Yes, sir, that's fine.

9 THE COURT: There's people here, but I
10 think y'all can be quiet enough.

11 MR. ALBRITTON: Yes, sir, I think so.

12 MR. SAYLES: Thank you, Judge.

13 THE COURT: Y'all get those back. We'll
14 try to get the jury back in here as quickly as we can.

15 LAW CLERK: All rise.

16 (Recess.)

17 LAW CLERK: All rise.

18 THE COURT: All right. Please be seated.

19 All right. Ladies and Gentlemen, listen carefully and
20 please come forward and take a seat in the jury box.

21 Ms. Andrews.

22 COURTROOM DEPUTY: Sidney Hastings,
23 Joseph Murrell, Mark Martin, Hazel Duncan, Oscar
24 Lawrence, Deborah Murphy, Susan Patterson, Blanchie
25 Jones, Brenda Abraham, Billy Jordan.

1 (Jury seated.)

2 THE COURT: Ladies and Gentlemen, those
3 of you who were not selected, I'm about to dismiss you.
4 We've got these two other juries to pick today. I want
5 to thank you, and, again, I want to apologize to you
6 again. You know, United States District Judges
7 generally don't run around apologizing, because we're
8 lifetime appointments. But you have my sincere apology
9 for the manner in which you were first admitted to the
10 courthouse this morning. That's all I can do at this
11 stage.

12 So you do a great service, though, by
13 being here. Even though you were not selected, the
14 system simply will not work unless we have more than are
15 going to serve, because that's the way the system is set
16 up.

17 You've done your country a great service,
18 and I hope that you will come again -- or when you're
19 summonsed again by myself or some -- my successor, that
20 my only instruction is that you come with the same great
21 attitude when you win our lottery.

22 Thank you very much. You're excused at
23 this time. Y'all are excused. Thank you very much.

24 (Jury panel out.)

25 THE COURT: Counsel, I will need you up

1 here just a minute. Less than a minute, I promise.

2 (Bench conference.)

3 THE COURT: I know I told y'all to be
4 ready to give opening statements, but this is Friday.
5 You know, we're not going to get to these people to keep
6 them here till 5:30 or so. I think I'm going to ask
7 them to -- you know, if we need to make up the time,
8 we'll just have to make it up during the week, or come
9 in one morning -- a couple of mornings at 8:00 or
10 something.

11 Is there any problem with that?

12 MR. SAYLES: I have no problem with that.

13 MR. ALBRITTON: No, Your Honor.

14 THE COURT: I just think opening
15 statements would be unfair to both sides and to the
16 jury, okay?

17 MR. ALBRITTON: Yes, sir, it is.

18 THE COURT: All right.

19 (Bench conference concluded.)

20 THE COURT: Please be seated.

21 All right. Then those of you that have
22 been selected, if you'll stand at this time, and take
23 the oath as jurors that Ms. Andrews will administer.

24 Ms. Andrews.

25 COURTROOM DEPUTY: Thank you, Your Honor.

1 Please raise your right hands.

2 (Jury sworn.)

3 THE COURT: Please be seated.

4 Ladies and Gentlemen, you now constitute
5 the jury in this case, and the Court's going to change
6 the schedule to the extent that rather than keeping you
7 here until late this afternoon and maybe till dark,
8 since I've got two more juries to select, I'm going to
9 go ahead, and in a few moments, we're going to excuse
10 you.

11 We'll just come back and we'll crank up
12 at 8:30 on Monday morning. And so that will give you at
13 least Friday afternoon off here. And we might have to a
14 couple of mornings come in at 8:00 o'clock rather than
15 8:30, but I think that would be better than y'all
16 spending Friday afternoon waiting to get to you.

17 So there's a couple of things that I need
18 to emphasize to you. You've heard no evidence in this
19 case, and you've got to decide this case on the evidence
20 you hear. And it's so important that you keep an open
21 mind, because not only do you decide this case on the
22 evidence, but you do decide, based upon the law as I
23 will instruct you, and that will be the last thing you
24 hear in this courtroom before you go in there to
25 deliberate.

1 So please keep an open mind as you go and
2 do that, just sort of -- that's something you sort of
3 need to think about, because it is a natural reaction.
4 Always sort of start making up your mind before you've
5 heard everything. That's something that a judge has to
6 work hard at not doing, so it's not always easy, but
7 please do that.

8 Now, you're going to go home this weekend
9 or this afternoon and you will see friends and family,
10 and you're going to be asked what are you doing. Of
11 course, I'm about to serve on a jury down in Federal
12 Court in Marshall.

13 My experience in the last 40-plus years
14 has taught me that the first question that your friend
15 or family is going to say is, what kind of case is it?
16 I'm instructing you don't answer that question, and
17 here's the reason why.

18 The moment you answer that question,
19 they're going to say, more than likely, you know, I know
20 something about a case like that, or, you know, I heard
21 about a patent case. And you just don't need to hear
22 that. That's something that might affect you.

23 So please, please do not discuss the case
24 or even what kind of case it is or anything about who's
25 involved, because that would be inappropriate.

1 Now, the other thing is I want you to be
2 thinking about, and I want you to follow this
3 instruction, is that you're not to do any type of
4 research about these companies, the parties to this
5 lawsuit or this device, this CYPHER device that's been
6 mentioned.

7 Do not get on the internet or try to
8 consult any type of books, anything to check about
9 anything about this lawsuit or these companies, because
10 that would be totally improper.

11 You've got to decide this case based
12 solely upon the evidence you hear and in accordance with
13 my final instructions to you.

14 Now, Monday morning, I'll give you some
15 preliminary instruction, but then you'll get my final
16 instructions. You've got to wait till all of this is
17 done.

18 The other thing is, I don't know whether
19 any of you are social networkers on your telephones or
20 not, but you've got to keep in mind that you can't
21 during the course of this trial, at breaks or lunchtime,
22 going out and texting people about what's going on in
23 this case or talking to them on the phone.

24 We have had the experience, not in this
25 Court but not too far from here, of jurors that were

1 just sort of hooked on using that telephone and texting
2 messages back and forth. And what happens is, you know,
3 you spend a week in trial and all this money from the
4 lawyers and their clients presenting their evidence, and
5 then it comes out somebody's been -- may have been
6 improperly influenced by somebody outside the courtroom.
7 And so what happens is you get a new trial and all the
8 money and time of everybody is wasted. And so please do
9 not do that. Keep that in mind.

10 I want you to have a safe weekend, and I
11 will see you back. We'll be ready to go promptly at
12 8:30 on Monday morning.

13 Thank you. You may leave the courtroom
14 at this time.

15 LAW CLERK: All rise for the jury.

16 THE COURT: You will follow Ms. Anderson
17 right here.

18 (Jury out.)

19 THE COURT: All right. Please be seated.
20 Anything from the Plaintiff at this time?

21 MR. ALBRITTON: Not at this time, Your
22 Honor.

23 THE COURT: Anything from the Defendant?

24 MR. SAYLES: Not at this time, Your
25 Honor.

1 THE COURT: Okay. Counsel, now remember,
2 we want the juror notebook on Monday morning that
3 contains at least the patent-in-suit and taking the
4 claim construction that the Court has given, just the
5 actual definitions and that -- and if you've got a
6 glossary.

7 MR. ALBRITTON: Yes, sir.

8 THE COURT: That's a minimum. If y'all
9 want to stipulate as to anything else that you want to
10 put in there by agreement, you may do so.

11 Any questions?

12 MR. ALBRITTON: No questions.

13 MR. SAYLES: No questions.

14 THE COURT: All right. Thank you for
15 being here.

16 Before I dismiss you, I just want to tell
17 the lawyers from LaserDynamics, as soon as we get this
18 jury in here, we'll go forward. And I'd like to excuse
19 this counsel, and while I'm getting the jury in, if the
20 counsel for Laser Dynamics will approach, please.

21 (Court adjourned.)

22 * * * * *

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/12

Date

/s/_____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date 12/31/12

Date